

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 SAN LUIS WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM SAN LUIS UNIT AND DELTA DIVISION

10 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 3, 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE
17 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and SAN LUIS
18 WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
19 California, duly organized, existing, and acting pursuant to the laws thereof;
20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood

24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
25 restoration, generation and distribution of electric energy, salinity control, navigation and other
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the
27 San Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed the Delta Division Facilities, including the
29 San Luis Unit facilities which include (the San Luis Canal and Dos Amigos Pumping Plant), which
30 will be used in part for the furnishing of water to the Contractor pursuant to the terms of this
31 Contract; and

32 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
33 to California law for operation of the Project; and

34 [4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-
35 200-7773A, as amended , which established terms for the delivery to the Contractor of Project Water
36 from January 1, 1975, through December 31, 2008, hereinafter referred to as the Existing Contract;
37 and

38 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
39 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
40 binding agreement identified as Binding Agreement No. 14-06-200-7773A-BA, which sets out the
41 terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration
42 date after completion of the Programmatic Environmental Impact Statement (PEIS) and other
43 appropriate environmental documentation and negotiation of a renewal contract; and which also sets

44 out the consequences of a subsequent decision not to renew: and

45 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal the
46 Existing Contract following completion of appropriate environmental documentation, including a
47 PEIS pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect
48 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts
49 for Project Water; and

50 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
51 environmental review necessary to provide for long-term renewal of the Existing Contract; and

52 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
53 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
54 State of California, for water service from the Project; and

55 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
56 its obligations under the Existing Contract; and

57 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
58 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
59 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
60 Water to be made available to it pursuant to this Contract; and

61 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
62 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
63 essential portion of its water supply; and

[12th] WHEREAS, the economies of regions within the Project, including the Contractor's,

depend upon the continued availability of water, including water service from the Project; and

(12.1) WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that

Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to

provide drainage service to the San Luis Unit; and

(12.2) WHEREAS, the Contractor and the Contracting Officer recognize that adequate

drainage service is required to maintain agricultural production within certain areas served with

Project Water made available under this Contract and all renewals thereof; and

(12.3) WHEREAS, the Contracting Officer intends, to the extent appropriated funds are

available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

[13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships

to pursue measures to improve water supply, water quality, and reliability of the Project for all

Project purposes; and

[14th] WHEREAS, the mutual goals of the United States and the Contractor include: to

provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment

of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a

reasonable balance among competing demands for use of Project Water; and to comply with all

applicable environmental statutes, all consistent with the legal obligations of the United States

relative to the Project; and

[14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative

84 relationship in order to achieve their mutual goals; and

85 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
86 rescheduling and conveyance of Project Water and non-Project **water** under this Contract as tools to
87 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

88 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
89 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
90 immediately above; and

91 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
92 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

93 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
94 contained, it is hereby mutually agreed by the parties hereto as follows:

95 DEFINITIONS

96 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
97 with the intent of the parties as expressed in this Contract, the term:

98 (a) "Calendar Year" shall mean the period January 1 through December 31, both
99 dates inclusive;

100 (b) "Charges" shall mean the payments required by Federal Reclamation law in
101 addition to the Rates and Tiered Pricing Components specified in this Contract as determined
102 annually by the Contracting Officer pursuant to this Contract;

103 (c) "Condition of Shortage" shall mean a condition respecting the Project during

104 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract

105 Total;

106 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
107 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
108 regulation;

109 (e) "Contract Total" shall mean the maximum amount of water to which the
110 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

111 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
112 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,
113 which may be modified from time to time in accordance with Article 35 of this Contract without
114 amendment of this Contract; `

115 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
116 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

117 (g.1) "Delta Division Facilities" shall mean those existing and future Project
118 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
119 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis
120 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive
121 water conveyed through the Delta-Mendota Canal.

122 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
123 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96

124 Stat. 1263), as amended, hereinafter referred to as RRA;

125 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
126 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
127 Reclamation law;

128 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting
129 Officer that shall amortize the expenditures for construction properly allocable to the Project
130 irrigation or M&I functions, as appropriate, of facilities in service including all Operation and
131 Maintenance (O&M) deficits funded, less payments, over such periods as may be required under
132 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the
133 construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at
134 that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and
135 shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full-Cost
136 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of
137 the Rules and Regulations for the RRA;

138 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be
139 delivered in accordance with Section 204 of the RRA;

140 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to
141 the delivery of Irrigation Water;

142 (m) "Irrigation Water" shall mean water made available from the Project that is
143 used primarily in the production of agricultural crops or livestock, including domestic use incidental

144 thereto, and watering of livestock;

145 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
146 nonexempt land, as provided in 43 CFR 426.2;

147 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other than
148 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
149 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
150 kept for personal enjoyment or water delivered to landholdings operated in units of less than five
151 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of
152 water delivered to any such landholding is a use described in subdivision (m) of this Article;

153 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the
154 delivery of M&I Water;

155 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable
156 care, control, operation, repair, replacement (other than capital replacement), and maintenance of
157 Project facilities;

158 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)
159 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
160 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
161 was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-Mendota
162 Water Authority and California Department of Water Resources;

163 (s) "Project" shall mean the Central Valley Project owned by the United States

and managed by the Department of the Interior, Bureau of Reclamation;

(t) “Project Contractors” shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

(u) “Project Water” shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(v) “Rates” shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

(w) “Recent Historic Average” shall mean the most recent five year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(x) “Secretary” shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(y) “Tiered Pricing Component” shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

(z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(aa) “Water Made Available” shall mean the estimated amount of Project Water

that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
pursuant to subdivision (a) of Article 4 of this Contract;

(bb) "Water Scheduled" shall mean Project Water made available to the Contractor
for which times and quantities for delivery have been established by the Contractor and Contracting
Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(cc) "Year" shall mean the period from and including March 1 of each Calendar
Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 2005, through February 28, ~~(29)~~,
2030, and supercedes the Existing Contract . In the event the Contractor wishes to renew this
Contract beyond February, 28, ~~(29)~~, 2030, the Contractor shall submit a request for renewal in
writing to the Contracting Officer no later than two years prior to the date this Contract expires. The
renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor
shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it
pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this
Article.

(b) (1) Under terms and conditions of a renewal contract that are mutually
agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the

204 Contractor, shall be renewed for a period of 25 years.

205 (2) The conditions which must be met for this Contract to be renewed are:

206 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting

207 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria

208 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an

209 effective water conservation and efficiency program based on the Contractor's water conservation

210 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all

211 water measuring devices and implementing all water measurement methods as approved by the

212 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and

213 beneficially used the Project Water supplies made available to it and, based on projected demands, is

214 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of

215 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying

216 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal

217 ability to deliver Project Water.

218 (3) The terms and conditions of the renewal contract described in

219 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent

220 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and

221 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the

222 Contractor's need for continued delivery of Project Water; environmental conditions affected by

223 implementation of the Contract to be renewed, and specifically changes in those conditions that

occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

(c) This Contract, insofar as it pertains to the furnishing of M&I Water to the Contractor, shall be renewed successive periods of up to 40 years each, which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised policy applicable to the delivery of M&I Water that would limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40 years.

(d) The Contracting Officer shall make a determination ten years after the date of execution of this Contract, and every five years thereafter during the term of this Contract, of whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat 483). The Contracting Officer shall also make a determination ten years after the date of execution of this Contract and every five years thereafter during the term of this Contract of whether a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956

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244 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
245 authorized Project construction expected to occur will have occurred, and on that basis the
246 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
247 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
248 satisfaction of the conditions set out in this subdivision, this Contract shall, at the request of the
249 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of
250 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
251 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
252 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
253 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
254 remaining amount of construction costs assignable for ultimate return by the Contractor can probably
255 be repaid to the United States within the term of a contract under subsection 9(d) or 9(c)(1),
256 whichever is applicable. If the remaining amount of costs that are properly assignable to the
257 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify
258 the Contractor, and provide the reason(s) why such a determination could not be made. Further, the
259 Contracting Officer shall make such a determination as soon thereafter as possible so as to permit,
260 upon request of the Contractor and satisfaction of the condition set out above, conversion to a
261 contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of
262 costs has not been made at a time which allows conversion of this Contract during the term of this
263 Contract or the Contractor has not requested conversion of this Contract within such term, the parties

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shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a provision that carries forth in substantially identical terms the provisions of this subdivision.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor **125,080?** _____ acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years, the Recent Historic Average of Water Made Available to the Contractor was **84,804?** _____ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

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284 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
285 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
286 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
287 the Delta, at the request of the Contractor and upon completion of any required environmental
288 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
289 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes
290 made necessary by the addition of such alternate points of delivery in or north of the Delta;
291 Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver
292 Project Water does not trigger this right of amendment.

293 (d) The Contractor shall make reasonable and beneficial use of all water furnished
294 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
295 banking programs, surface water storage programs, and other similar programs utilizing Project
296 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
297 Area which are consistent with applicable State law and result in use consistent with Federal
298 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
299 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
300 further, That such water conservation plan demonstrates sufficient lawful uses exist in the
301 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is
302 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.
303 Groundwater recharge programs, groundwater banking programs, surface water storage programs,

and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidence in excess of 30 years of diversions for irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under this Article during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making

324 such a determination. If the Contracting Officer determines that Project Water, or other water
325 available to the Project, can be made available to the Contractor, the Contracting Officer will
326 announce the availability of such water and shall so notify the Contractor as soon as practical. The
327 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
328 taking such water to determine the most equitable and efficient allocation of such water. If the
329 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
330 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
331 and policies. Subject to existing long-term contractual commitments, water rights and operational
332 constraints, long-term Project Contractors shall have a first right to acquire such water, including
333 Project Water made available pursuant to Section 215 of the RRA

334 (g) The Contractor may request permission to reschedule for use during the
335 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
336 referred to as "rescheduled water." The Contractor may request permission to use during the current
337 Year a quantity of Project Water which may be made available by the United States to the Contractor
338 during the subsequent Year referred to as "preuse." The Contracting Officer's written approval may
339 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

340 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
341 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
342 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
343 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations

under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, that the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's expected declaration of the Water Made Available. Such declaration will be expressed in terms of both Water Made Available and the Recent Historic Average and will be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made

Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s) **thereto**, satisfactory to the Contracting Officer, submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this

384 Contract shall be delivered to the Contractor at Project facilities and any additional point or points of
385 delivery either on Project facilities or another location or locations mutually agreed to in writing by
386 the Contracting Officer and the Contractor.

387 (b) The Contracting Officer, either directly or indirectly through its written
388 agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
389 maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to the
390 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

391 (c) The Contractor shall deliver Irrigation Water in accordance with any
392 applicable land classification provisions of Federal Reclamation law and the associated regulations.
393 The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
394 approved in advance by the Contracting Officer.

395 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
396 measured and recorded with equipment furnished, installed, operated, and maintained by the
397 Contracting Officer either directly or indirectly through its written agreements(s) with the Operating
398 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
399 Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon
400 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
401 investigated by the appropriate Operating Non-Federal Entity (ies) the accuracy of such
402 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
403 period of time when accurate measurements have not been made, the Contracting Officer shall

consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies); or (v) failure of the United States, its officers, employees, agents and assigns, including the Operating Non-Federal Entity(ies), to provide drainage service.

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

424 6. (a) The Contractor has established a measuring program satisfactory to the
425 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
426 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
427 water delivered for M&I purposes is measured at each M&I service connection. The water
428 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
429 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
430 maintaining and repairing all such measuring devices and implementing all such water measuring
431 methods at no cost to the United States. The Contractor shall use the information obtained from such
432 water measuring devices or water measuring methods to ensure its proper management of the water,
433 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
434 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
435 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
436 from establishing and collecting any charges, assessments, or other revenues authorized by California
437 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
438 report described in subdivision (c) of Article 26.

439 (b) To the extent the information has not otherwise been provided, upon execution
440 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
441 the measurement devices or water measuring methods being used or to be used to implement
442 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
443 connections or alternative measurement programs approved by the Contracting Officer, at which such

444 measurement devices or water measuring methods are being used, and, if applicable, identifying the
445 locations at which such devices and/or methods are not yet being used including a time schedule for
446 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
447 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
448 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
449 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
450 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
451 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
452 which the Contractor shall modify said measuring devices and/or measuring methods as required by
453 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

454 (c) All new surface water delivery systems installed within the Contractor's
455 Service Area after the effective date of this Contract shall also comply with the measurement
456 provisions described in subdivision (a) of this Article.

457 (d) The Contractor shall inform the Contracting Officer and the State of California
458 in writing by April 30 of each Year of the monthly volume of surface water delivered within the
459 Contractor's Service Area during the previous Year.

460 (e) The Contractor shall inform the Contracting Officer and the Operating Non-
461 Federal Entity on or before the (20th) calendar day of each month of the quantity of Irrigation Water
462 and M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER

7. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Components as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such

483 notification shall revise Exhibit "B."

484 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
485 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
486 Water for the following Year and the computations and cost allocations upon which those Rates are
487 based. The Contractor shall be allowed not less than two months to review and comment on such
488 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
489 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for
490 the upcoming Year, and such notification shall revise Exhibit "B."

491 (c) At the time the Contractor submits the initial schedule for the delivery of
492 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
493 shall make an advance payment to the United States equal to the total amount payable pursuant to the
494 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
495 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
496 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
497 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
498 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
499 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
500 for Water Delivered shall be made before the end of the following month; Provided, That any revised
501 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
502 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with

503 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
504 to the Contractor in advance of such payment. In any month in which the quantity of Water
505 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
506 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
507 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
508 adjustment between the advance payments for the Water Scheduled and payments for the quantities
509 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
510 but no later than April 30th of the following Year, or sixty days after the delivery of Project Water
511 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
512 last day of February.

513 (d) The Contractor shall also make a payment in addition to the Rate(s) in
514 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
515 appropriate Tiered Pricing Component then in effect, before the end of the month following the
516 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
517 Pricing Component pursuant to subdivision (j) (2) of this Article. The payments shall be consistent
518 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
519 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
520 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
521 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
522 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of

523 payments due to the United States for Charges for the next month. Any amount to be paid for past
524 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
525 of this Contract.

526 (e) The Contractor shall pay for any Water Delivered under subdivision (a),(f), or
527 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
528 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
529 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
530 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
531 (a) of this Article.

532 (f) Payments to be made by the Contractor to the United States under this
533 Contract may be paid from any revenues available to the Contractor.

534 (g) All revenues received by the United States from the Contractor relating to the
535 delivery of Project Water or the delivery of non-Project water through Project facilities shall be
536 allocated and applied in accordance with Federal Reclamation law and the associated rules or
537 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

538 (h) The Contracting Officer shall keep its accounts pertaining to the administration
539 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
540 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
541 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
542 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,

and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

(i) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

(j) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

563 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
564 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
565 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
566 Water Delivered.

567 (2) Subject to the Contracting Officer's written approval, the Contractor
568 may request and receive an exemption from such Tiered Pricing Component for Project Water
569 delivered to produce a crop which the Contracting Officer determines will provide significant and
570 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
571 Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply
572 only if such habitat values can be assured consistent with the purposes of the CVPIA through binding
573 agreements executed with or approved by the Contracting Officer prior to use of such water.

574 (3) For purposes of determining the applicability of the Tiered Pricing
575 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
576 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
577 include the additional water provided to the Contractor under the provisions of subdivision (f) of
578 Article 3 of this Contract.

579 (k) For the term of this Contract, Rates applied under the respective ratesetting
580 policies will be established to recover only reimbursable O&M (including any deficits) and capital
581 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
582 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance

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583 with the relevant Project ratesetting policy. Changes of significance in practices which implement
584 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
585 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
586 change.

587 (l) Except as provided in subsections 3405(a) (1) (B) and 3405(f) of the CVPIA,
588 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
589 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
590 changed costs if any, incurred by the Contracting Officer in the delivery of the transferred Project
591 Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges
592 because of inability to pay and is transferring Project Water to another entity whose Rates and
593 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
594 shall not be adjusted to reflect the Contractor's inability to pay.

595 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
596 Officer is authorized to adjust determinations of ability to pay every 5 years.

597 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
598 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
599 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
600 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed
601 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor
602 may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or

imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable to the Contractor. **(Contractor Specific)**

NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

8. The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability therefor.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including but not limited to,

documents prepared pursuant to the NEPA and ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including but not limited to, documents prepared pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface

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643 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
644 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single
645 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
646 facilities with no new construction or modifications to facilities and be between existing Project
647 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
648 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of
649 the environment and Indian Trust Assets, as defined under Federal law.

650 APPLICATION OF PAYMENTS AND ADJUSTMENTS

651 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
652 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
653 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
654 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
655 the option of the Contractor, may be credited against amounts to become due to the United States by
656 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
657 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
658 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
659 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
660 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
661 in which the overpayment was made.

662 (b) All advances for miscellaneous costs incurred for work requested by the

663 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when
664 the work has been completed. If the advances exceed the actual costs incurred, the difference will be
665 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
666 be billed for the additional costs pursuant to Article 25.

667 TEMPORARY REDUCTIONS--RETURN FLOWS

668 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
669 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or
670 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make
671 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
672 Contract.

673 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
674 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
675 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
676 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far
677 as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
678 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
679 which case no notice need be given; Provided, That the United States shall use its best efforts to
680 avoid any discontinuance or reduction in such service. Upon resumption of service after such
681 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
682 deliver the quantity of Project Water which would have been delivered hereunder in the absence of

683 such discontinuance or reduction.

684 (c) The United States reserves the right to all seepage and return flow water
685 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
686 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
687 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
688 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
689 under the Contractor. **(Contractor Specific)**

690 CONSTRAINTS ON THE AVAILABILITY OF WATER

691 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
692 means to guard against a Condition of Shortage in the quantity of water to be made available to the
693 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
694 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
695 determination as soon as practicable.

696 (b) If there is a Condition of Shortage because of errors in physical operations of
697 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
698 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
699 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
700 agents, or employees for any damage, direct or indirect, arising therefrom.

701 (c) In any Year in which there may occur a Condition of Shortage for any of the
702 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the

703 Contracting Officer will first allocate the available Project Water consistent with the **M&I Water**
704 **Shortage Policy** in its form on the effective date of this Contract for determining the amount of
705 Project Water available for delivery to the Project Contractors. Subject to the foregoing allocation, in
706 any year in which there may occur a Condition of Shortage, the Contracting Officer shall then
707 apportion Project Water among the Contractor and others entitled to Project Water from Delta
708 Division Facilities under long-term water service or repayment contracts (or renewals thereof or
709 binding commitments **therefor**) in force on February 28, 2005, as follows:

710 (1) The Contracting Officer shall make an initial and subsequent
711 determination as necessary of the total quantity of Project Water estimated to be scheduled or actually
712 scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water
713 service or repayment contracts then in force for the delivery of Project Water by the United States
714 from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter
715 referred to as the scheduled total

716 (2) A determination shall be made of the total quantity of Project Water
717 that is available for meeting the scheduled total, the quantity so determined being hereinafter referred
718 to as the available supply;

719 (3) The total quantity of Project Water estimated to be scheduled or
720 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4
721 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to
722 as the Contractor's proportionate share; and

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723 (4) The available supply shall be multiplied by the Contractor's
724 proportionate share and the result shall be the quantity of Project Water made available by the United
725 States to the Contractor for the relevant Year in accordance with the schedule developed by the
726 Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such amount
727 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
728 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
729 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
730 such additions or reductions to the available supply shall be apportioned consistent with
731 subparagraphs (1) through (4), inclusive.

732 (d) By entering into this Contract, the Contractor does not waive any legal rights
733 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
734 (i) the sufficiency of the **M&I Water Shortage Policy**; (ii) the substance of such a policy; (iii) the
735 applicability of such a policy; or (iv) the manner in which such policy is implemented in order to
736 allocate Project Water between municipal and industrial and irrigation purposes; Provided, that the
737 Contractor has commenced any such judicial challenge or any administrative procedures necessary to
738 institute any judicial challenge within 6 months of the policy becoming final. By agreeing to the
739 foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may have to
740 assert in such a proceeding. Nothing contained herein shall be interpreted to validate or invalidate the
741 **M&I Water Shortage Policy.**

742 UNAVOIDABLE GROUNDWATER PERCOLATION

13. To the extent applicable, the Contractor shall not be deemed to have delivered

Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such

lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of

the delivery of Irrigation Water by the Contractor to Eligible Lands.

RULES AND REGULATIONS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

(b) The O&M of Project facilities shall be performed in such manner as is

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770 practicable to maintain the quality of raw water made available through such facilities at the highest
771 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
772 responsible for compliance with all State and Federal water quality standards applicable to surface
773 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
774 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

775 (c) The Contracting Officer shall notify the Contractor in writing when drainage
776 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the
777 Contractor at rates established pursuant to the then-existing ratesetting policy for irrigation water;
778 Provided, that such ratesetting policy shall be amended, modified, or superceded only through the
779 process described in subdivision (c) of Article 7 of this Contract.

780 WATER ACQUIRED BY THE CONTRACTOR
781 OTHER THAN FROM THE UNITED STATES

782 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
783 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
784 be simultaneously transported through the same distribution facilities of the Contractor subject to the
785 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
786 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
787 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
788 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
789 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
790 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be

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791 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
792 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
793 Water and non-Project water are/were constructed with funds made available pursuant to Federal
794 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
795 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
796 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
797 cost to the Federal Government, including interest, of storing or delivering non-Project water, which
798 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
799 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
800 The incremental fee per acre is the mathematical result of such quotient times the interest rate
801 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
802 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
803 receives non-Project water through Federally financed or constructed facilities. The incremental fee
804 calculation methodology will continue during the term of this Contract absent the promulgation of a
805 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
806 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
807 regulation or policy is adopted it shall supercede this provision.

808 (b) Water or water rights now owned or hereafter acquired by the Contractor,
809 other than from the United States may be stored, conveyed and/or diverted through Project facilities,
810 subject to the completion of appropriate environmental documentation, with the approval of the

811 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
812 necessary, consistent with the following provisions:

813 (1) The Contractor may introduce non-Project water into Project facilities
814 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
815 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
816 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
817 use power policy, if such Project use power policy is applicable, each as amended, modified or
818 superceded from time to time.

819 (2) Delivery of such non-Project water in and through Project facilities
820 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
821 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
822 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other
823 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

824 (3) Neither the United States nor the Operating Non-Federal Entity(ies) shall be responsible for
825 control, care or distribution of the non-Project water before it is introduced into or after it is delivered
826 from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the
827 United States and the Operating Non-Federal Entity(ies), and their respective officers, agents, and
828 employees, from any claim for damage to persons or property, direct or indirect, resulting from the
829 act(s) of the Contractor, its officers, employees, agents, or assigns, in (i) extracting or diverting non-
830 Project water from any source, or (ii) diverting such non-Project water into Project facilities.

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(4) Diversion of such non-Project water into Project facilities shall be

consistent with all applicable laws, and if involving groundwater, consistent with any applicable groundwater management plan for the area from which it was extracted.

(5) After Project purposes are met, as determined by the Contracting

Officer, the United States and Project Contractors entitled to Project Water from Delta Division

Facilities shall share priority to utilize the remaining capacity of the facilities declared to be

available by the Contracting Officer for conveyance and transportation of non-Project water prior to

any such remaining capacity being made available to non-Project contractors. Other Project

Contractors shall have a second priority to any remaining capacity of facilities declared to be

available by the Contracting Officer for conveyance and transportation of non-Project water prior to

any such remaining capacity being made available to non-Project contractors.

OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the

opinion or determination of either party to this Contract, said terms shall not be construed as

permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or

unreasonable opinion or determination. Each opinion or determination by either party shall be

provided in a timely manner. Nothing in ~~this~~ subdivision (a) of ~~this~~ Article 18 of this Contract is

intended to or shall affect or alter the standard of judicial review applicable under Federal law to any

851 opinion or determination implementing a specific provision of Federal law embodied in statute or
852 regulation.

853 (b) The Contracting Officer shall have the right to make determinations necessary
854 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
855 United States and of the State of California, and the rules and regulations promulgated by the
856 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
857 the extent reasonably practicable.

858 COORDINATION AND COOPERATION

859 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
860 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
861 affected Project Contractors, in order to improve the operation and management of the Project. The
862 communication, coordination, and cooperation regarding operations and management shall include,
863 but not be limited to, any action which will or may materially affect the quantity or quality of Project
864 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
865 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
866 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
867 authority for all actions, opinions, and determinations to be made by the respective party.

868 (b) Within 120 days following the effective date of this Contract, the Contractor,
869 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
870 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be

871 amended as necessary separate and apart from this Contract. The goal of this process shall be to
872 provide, to the extent practicable, the means of mutual communication and interaction regarding
873 significant decisions concerning Project operation and management on a real-time basis.

874 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
875 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

876 (1) The Contracting Officer will, at the request of the Contractor, assist in
877 the development of integrated resource management plans for the Contractor. Further, the
878 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
879 improve water supply, water quality, and reliability.

880 (2) The Secretary will, as appropriate, pursue program and project
881 implementation and authorization in coordination with Project Contractors to improve the water
882 supply, water quality, and reliability of the Project for all Project purposes.

883 (3) The Secretary will coordinate with Project Contractors and the State of
884 California to seek improved water resource management.

885 (4) The Secretary will coordinate actions of agencies within the
886 Department of the Interior that may impact the availability of water for Project purposes.

887 (5) The Contracting Officer shall periodically, but not less than annually,
888 hold division level meetings to discuss Project operations, division level water management
889 activities, and other issues as appropriate.

890 (d) Without limiting the contractual obligations of the Contracting Officer under

the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or the physical integrity of structures or facilities.

CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

EQUAL OPPORTUNITY

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in

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922 conspicuous places, available to employees and applicants for employment, notices to be provided by
923 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

924 (b) The Contractor will, in all solicitations or advertisements for employees placed
925 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
926 employment without discrimination because of race, color, religion, sex, or national origin.

927 (c) The Contractor will send to each labor union or representative of workers with
928 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
929 provided by the Contracting Officer, advising the said labor union or workers' representative of the
930 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
931 shall post copies of the notice in conspicuous places available to employees and applicants for
932 employment.

933 (d) The Contractor will comply with all provisions of Executive Order
934 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
935 the Secretary of Labor.

936 (e) The Contractor will furnish all information and reports required by said
937 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
938 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
939 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
940 regulations, and orders.

941 (f) In the event of the Contractor's noncompliance with the nondiscrimination
942 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
943 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
944 for further Government contracts in accordance with procedures authorized in said amended
945 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
946 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
947 by law.

948
949 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
950 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
951 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
952 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
953 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
954 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That
955 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor
956 or vendor as a result of such direction, the Contractor may request the United States to enter into such
957

958 litigation to protect the interests of the United States.

959 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

960 22. (a) The obligation of the Contractor to pay the United States as provided in this
961 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
962 may be distributed among the Contractor's water users and notwithstanding the default of individual
963 water users in their obligations to the Contractor.

964 (b) The payment of charges becoming due hereunder is a condition precedent to
965 receiving benefits under this Contract. The United States shall not make water available to the
966 Contractor through Project facilities during any period in which the Contractor may be in arrears in
967 the advance payment of water rates due the United States. The Contractor shall not furnish water
968 made available pursuant to this Contract for lands or parties which are in arrears in the advance
969 payment of water rates levied or established by the Contractor.

970 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
971 obligation to require advance payment for water rates which it levies.

972 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

973
974 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
975 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
976 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
977 well as with their respective implementing regulations and guidelines imposed by the U.S.
978 Department of the Interior and/or Bureau of Reclamation.

979 (b) These statutes require that no person in the United States shall, on the grounds
980 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
981 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
982 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
983 agrees to immediately take any measures necessary to implement this obligation, including
984 permitting officials of the United States to inspect premises, programs, and documents.

985 (c) The Contractor makes this agreement in consideration of and for the purpose
986 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
987 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
988 installment payments after such date on account of arrangements for Federal financial assistance
989 which were approved before such date. The Contractor recognizes and agrees that such Federal

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assistance will be extended in reliance on the representations and agreements made in this Article,
and that the United States reserves the right to seek judicial enforcement thereof.

PRIVACY ACT COMPLIANCE

24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and

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1021 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1022 direct cost incurred by the United States for work requested by the Contractor associated with this
1023 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1024 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1025 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1026 administration.

1027 WATER CONSERVATION

1028 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1029 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1030 implementing an effective water conservation and efficiency program based on the Contractor's water
1031 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1032 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1033 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1034 economically feasible water conservation measures, and time schedules for meeting those objectives.
1035 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1036 continued implementation of such water conservation program. In the event the Contractor's water
1037 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1038 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1039 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1040 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently

1041 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1042 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1043 program in accordance with the time schedules therein.

1044 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1045 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1046 the Best Management Practices identified by the time frames issued by the California Urban Water
1047 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1048 Officer to be inappropriate for the Contractor.

1049 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1050 its implementation of the water conservation plan on the reporting dates specified in the then existing
1051 conservation and efficiency criteria established under Federal law.

1052 (d) At five year intervals, the Contractor shall revise its water conservation plan to
1053 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1054 established under Federal law and submit such revised water management plan to the Contracting
1055 Officer for review and evaluation. The Contracting Officer will then determine if the water
1056 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1057 evaluating water conservation plans established under Federal law.

1058 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1059 be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

OPERATION AND MAINTENANCE BY SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY

28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water

1082 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1083 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1084 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1085 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1086 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1087 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1088 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1089 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1090 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1091 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1092 Non-Federal Entity collects payments on behalf of the United States in accordance with subdivision
1093 (a) of this Article.

1094 (c) For so long as the O&M of any portion of the Project facilities serving the
1095 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1096 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1097 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1098 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1099 successor.

1100 (d) In the event the O&M of the Project facilities operated and maintained by
1101 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, is re-assumed by the

1102 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1103 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1104 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1105 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1106 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1107 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United
1108 States in compliance with Article 7 of this Contract.

1109
1110 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF WATER
1111 RESOURCES
1112

1113 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1114 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1115 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1116 200-9755) between the United States and Operating Non-Federal Entity California Department of
1117 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1118 of the Contractor or the United States hereunder.

1119 (b) The Contracting Officer has previously notified the Contractor in writing that
1120 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1121 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1122 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1123 successor approved by the Contracting Officer under the terms and conditions of the separate

1124 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1125 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1126 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1127 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1128 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1129 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1130 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1131 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1132 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1133 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
1134 agreement identified in subdivision (a) of Article 28 of this Contract.

1135 (c) For so long as the O&M of any portion of the Project facilities serving the
1136 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1137 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1138 Water Delivered under this Contract representing the cost associated with the activity being
1139 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1140 successor.

1141 (d) In the event the O&M of the Project facilities operated and maintained by
1142 Operating Non-Federal Entity California Department of Water Resources, is re-assumed by the
1143 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,

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1144 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1145 Rates, Charges, and Tiered Pricing Component(s) to be paid by the Contractor for Project Water
1146 under this Contract representing the O&M costs of the portion of such Project facilities which have
1147 been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the
1148 Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1149 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this
1150 Contract.

1151 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
1152 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR
1153

1154 28.2. (a) The United States shall furnish and install pumping plants and furnish the
1155 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1156 the Contractor from the Delta-Mendota and San Luis Canals at the point(s) of delivery identified
1157 pursuant to subdivision (a) of Article 5 at heads and elevations sufficient to irrigate by gravity the
1158 areas within the Contractor's Service Area below 700 feet mean sea level elevation.

1159 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1160 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1161 divert and deliver Project Water from the Delta-Mendota and San Luis Canals before the United
1162 States furnishes and installs all the permanent pumping plants referred to in subdivision (a) of this
1163 Article. The United States shall furnish the amount of Project power needed to operate such pumping
1164 facilities; Provided, That the Contractor maintains an agreement with an entity to convey such power
1165 to such facilities, and the Contractor agrees to pay any and all charges assessed by that entity for such

1166 service.

1167 (c) The furnishing of power by the United States shall be in conformance with
1168 operating criteria, rules, and regulations, including the project use power policy, established by the
1169 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1170 project use power policy, established by the Contracting Officer shall not excuse the United States
1171 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1172 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1173 irrigation management practices and the power generation capacity available to the United States for
1174 the furnishing of Project water to the Contractor.

1175 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1176 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1177 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1178 of all major replacements that the Contracting Officer determines are needed.

1179 (e) The Contracting Officer or his representative shall at all times have access to
1180 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1181 being kept in safe and proper operating condition.

1182 (f) No change in any of the pumping facilities, which in the opinion of the
1183 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1184 consent of the Contracting Officer. The Contractor promptly shall make any and all repairs and
1185 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.

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1186 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1187 operation by the United States of the pumping facilities pursuant to subdivision (i) of this Article, the
1188 United States may cause the repairs and replacements to be made and the cost thereof, as determined
1189 by the Contracting Officer, shall be paid by the Contractor to the United States upon notice of the
1190 payment due but not later than April 1 of the year following that during which such work was
1191 completed.

1192 (g) In the event the Contracting Officer determines that the Contractor has not
1193 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1194 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1195 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1196 the Contractor of such election and the effective date thereof. Thereafter during the period of
1197 operation by the United States the Contractor shall pay to the United States in advance of the use of
1198 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1199 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1200 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1201 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1202 pay such amount on or before the date specified in said notice. Any amount of such advances
1203 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1204 credited upon amounts to become due to the United States from the Contractor under the provisions
1205 of this Contract in subsequent years. The pumping facilities so taken back by the United States may

1206 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1207 intention to retransfer.

1208 (h) The Contractor shall hold the United States, its officers and employees
1209 harmless from every and all claim for damages to persons or property arising out of or connected
1210 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That
1211 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1212 other than the United States with respect to such matters.

1213 (i) During the time the pumping facilities are operated and maintained by the
1214 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1215 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United
1216 States for work associated with the pumping facilities under this Contract normally charged by the
1217 United States to water users and properly and equitably chargeable to the Contractor.

1218 (j) The Contracting Officer may make review of any part or all of the pumping
1219 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1220 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1221 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and
1222 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1223 reimburse the actual cost incurred by the United States in making O&M examinations, inspections,
1224 and audits, and preparing associated reports and recommendations.

1225 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,

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1226 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1227 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1228 remedial measures required for their correction, and to assist the Contractor in solving specific
1229 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1230 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1231 States.

1232 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1233 29. The expenditure or advance of any money or the performance of any obligation of the
1234 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1235 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1236 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1237 or allotted.

1238 BOOKS, RECORDS, AND REPORTS
1239

1240 30. (a) The Contractor shall establish and maintain accounts and other books and
1241 records pertaining to administration of the terms and conditions of this Contract, including: the
1242 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1243 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1244 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1245 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1246 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1247 during office hours to examine and make copies of the other party's books and records relating to
1248 matters covered by this Contract.

1249 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1250 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1251 such books, records, or information are reasonably related to the administration or performance of
1252 this Contract. Any such request shall allow the Contractor a reasonable period of time within which

1253 to provide the requested books, records, or information.

1254 (c) At such time as the Contractor provides information to the Contracting Officer
1255 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1256 Operating Non-Federal Entity.

1257 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1258 31. (a) The provisions of this Contract shall apply to and bind the successors and
1259 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1260 therein shall be valid until approved in writing by the Contracting Officer.

1261 (b) The assignment of any right or interest in this Contract by either party shall not
1262 interfere with the rights or obligations of the other party to this Contract absent the written
1263 concurrence of said other party.

1264 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1265 of any proposed assignment.

1266 SEVERABILITY

1267 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1268 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1269 association or other form of organization whose primary function is to represent parties to Project
1270 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1271 enforceability of a provision included in this Contract and said person, entity, association, or
1272 organization obtains a final court decision holding that such provision is legally invalid or
1273 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the

1274 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1275 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1276 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1277 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1278 actions designated above, to the extent it can do so without violating any applicable provisions of
1279 law, the United States shall continue to make the quantities of Project Water specified in this
1280 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1281 to be legally invalid or unenforceable in the final court decision.

1282 RESOLUTION OF DISPUTES

1283 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1284 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1285 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1286 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1287 notice of the intent to take such action; Provided, That such notice shall not be required where a
1288 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1289 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in
1290 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1291 waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

1292 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1293 Contractor shall benefit from this Contract other than as a water user or landowner in the same

1294 manner as other water users or landowners.

1295 CHANGES IN CONTRACTOR'S SERVICE AREA

1296 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1297 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1298 except upon the Contracting Officer's written consent.
1299

1300 (b) Within 30 days of receipt of a request for such a change, the Contracting
1301 Officer will notify the Contractor of any additional information required by the Contracting Officer
1302 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1303 timely completion of the process. Such process will analyze whether the proposed change is likely
1304 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1305 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1306 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1307 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1308 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1309 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

FEDERAL LAWS

1310 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1311 validity or application in connection with the performance of the terms and conditions of this
1312 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1313 terms and conditions of this Contract unless and until relief from application of such Federal law or
1314 regulation to the implementing provision of the Contract is granted by a court of competent
1315 jurisdiction.
1316

NOTICES

1317 37. Any notice, demand, or request authorized or required by this Contract shall be

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1318 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1319 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1320 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of
1321 the San Luis Water District, 1015 6th Street, Los Banos, California 93635. The designation of the
1322 addressee or the address may be changed by notice given in the same manner as provided in this
1323 Article for other notices.
1324

1325 CONFIRMATION OF CONTRACT

1326 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1327 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1328 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1329 validation proceedings, and all pertinent supporting records of the court approving and confirming
1330 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

|

CONTRACT NO. 14-

EXHIBIT A

[Map or Description of Service Area]

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CONTRACT NO. 14-

EXHIBIT B
[Initial Rates and Charges]